

1 KEVIN V. RYAN (CSBN 118321)  
United States Attorney

2 EUMI L. CHOI (WVBN 0722)  
3 Acting Chief, Criminal Division

4 ANNE-CHRISTINE MASSULLO (CSBN 117506)  
HARTLEY M. K. WEST (CSBN 191609)  
5 Assistant United States Attorneys

6 450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102  
7 Telephone: (415) 436-6747

8 Attorneys for the United States of America

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16  
17 MIN T. MA,  
18 Defendant.

No. CR 04-0405 JSW

PLEA AGREEMENT

19  
20 I, Min T. Ma, and the United States Attorney's Office for the Northern District of  
21 California (hereafter "the government") enter into this written plea agreement (the "Agreement")  
22 pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to counts one and two of the captioned information  
25 charging me with insider trading in violation of 15 U.S.C. § 78j(b), 15 U.S.C. § 78ff(a), and 17  
26 CFR 240.10b-5. I agree that the elements of the offense and the maximum penalties are as  
27 follows: (1) I had a duty of trust or confidence to the source of material, nonpublic information  
28 regarding the issuer of a security; (2) I used that material, nonpublic information to purchase a

PLEA AGREEMENT

1 security of the issuer in breach of my duty to the source; and (3) I acted willfully.

- |   |    |                                 |              |
|---|----|---------------------------------|--------------|
| 2 | a. | Maximum prison sentence         | 20 years     |
| 3 | b. | Maximum fine                    | \$5 million  |
| 4 | c. | Maximum supervised release term | 3 years      |
| 5 | d. | Mandatory special assessment    | \$100        |
| 6 | e. | Restitution                     | \$197,258.62 |

7 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that  
8 the following facts are true:

9 Between approximately June 9 and July 17, 2003, I purchased 8800 shares of stock in a  
10 company called SangStat Medical Corporation. On approximately August 25 and 26, 2003, I  
11 purchased 10,730 shares of stock in another company, called Applied Molecular Evolution, Inc.  
12 I purchased all of these shares based on material, nonpublic information and in violation of  
13 federal insider trading laws. Specifically, while working as a desktop publisher, I performed a  
14 series of jobs during which I learned that SangStat and Applied Molecular were the potential  
15 targets of mergers with other publicly-traded corporations. I used this information in deciding to  
16 buy the shares of SangStat and Applied Molecular stock. I believed that, once some or all of this  
17 material, nonpublic information became publicly known, SangStat and Applied Molecular stock  
18 prices would rise. After the mergers were publicly announced, I sold the 8800 shares of SangStat  
19 stock for a net gain of \$78,123.44, and the 10,730 shares of Applied Molecular stock for a net  
20 gain of \$119,135.18.

21 3. I agree to give up all rights that I would have if I chose to proceed to trial,  
22 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
23 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise  
24 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and  
25 to pursue any affirmative defenses and present evidence. To the extent that I have a right to have  
26 facts that are used to determine the sentence (including any Sentencing Guideline factors, upward  
27 adjustments, or upward departures) charged in the information by the United States Attorney and  
28 found by a jury at trial beyond a reasonable doubt (see Blakely v. Washington, 124 S. Ct. 2531

(2004)), I waive those rights and agree that the Court will find the facts that enhance my sentence beyond a reasonable doubt, consistent with the Ninth Circuit's holdings in United States v. Thomas, 355 F.3d 1191, 1201-02 (9<sup>th</sup> Cir. 2004) and United States v. Banuelos, 322 F.3d 700 (9<sup>th</sup> Cir. 2003).

4. I agree to give up my right to appeal my convictions, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal any aspect of my sentence, including any orders relating to forfeiture and/or restitution.

5. I agree not to file any collateral attack on my convictions or sentence, including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

6. I agree not to ask the Court to withdraw my guilty pleas at any time after they are entered, unless the Court imposes a sentence of incarceration above the high-end of the applicable Guidelines range for offense level 15. I agree that the government may withdraw from this agreement if the Court imposes a sentence of incarceration below the low-end of the applicable Guidelines range for offense level 12.

7. I agree that my sentence should be calculated pursuant to the Sentencing Guidelines as follows, and that I will not ask for any other adjustment to or reduction in the offense level or for a downward departure of any kind, except that I may argue for a downward departure to offense level 12 (and not lower) on the basis of extraordinary family responsibilities, extraordinary acceptance of responsibility, or a combination of these factors. I understand that the United States does not agree to any downward departures and reserves the right to argue against them at sentencing.

a.	Base Offense Level, U.S.S.G. § 2B1.4 (2004 Edition)	8
b.	Amount of unlawful gain more than \$120,000 U.S.S.G § 2B1.1(b)(1)(F)	+10
c.	Acceptance of responsibility: (If I meet the requirements of U.S.S.G. § 3E1.1(a) and (b)(1), (2))	-3
f.	Adjusted offense level	15

1           8. I agree that restitution in the amount of \$197,258.62 is appropriate. I agree that I  
2 will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before  
3 or after sentencing, I will, upon request of the Court, the government, or the U.S. Probation  
4 Office, provide accurate and complete financial information, submit sworn statements and give  
5 depositions under oath concerning my assets and my ability to pay, surrender assets I obtained as  
6 a result of my crimes, and release funds and property under my control in order to pay any fine,  
7 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

8           9. I agree not to commit or attempt to commit any crimes before sentence is imposed  
9 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial  
10 release (if any); intentionally provide false information to the Court, the Probation Office,  
11 Pretrial Services, or the government; or fail to comply with any of the other promises I have  
12 made in this Agreement. I agree that, if I fail to comply with any promises I have made in this  
13 Agreement, then the government will be released from all of its promises in this agreement,  
14 including those set forth in paragraphs 12 through 14 below, but I will not be released from my  
15 guilty pleas.

16          10. I agree that this Agreement contains all of the promises and agreements between  
17 the government and me, and I will not claim otherwise in the future.

18          11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern  
19 District of California only, and does not bind any other federal, state, or local agency.

20 The Government's Promises

21          12. The government agrees to move to dismiss any open charges pending against the  
22 defendant in the captioned information at the time of sentencing.

23          13. The government agrees not to file or seek any additional charges against the  
24 defendant that could be filed as a result of the investigation that led to the captioned information.

25          14. The government agrees that the appropriate sentence in this case should be as set  
26 forth in paragraphs 7 and 8 above, unless the defendant violates the agreement as set forth in  
27 paragraph 9 above or fails to accept responsibility.

28 ///

1    The Defendant's Affirmations

2            15.    I confirm that I have had adequate time to discuss this case, the evidence, and this  
3 Agreement with my attorney, and that she has provided me with all the legal advice that I  
4 requested.

5            16.    I confirm that while I considered signing this Agreement, and at the time I signed  
6 it, I was not under the influence of any alcohol, drug, or medicine.

7            17.    I confirm that my decision to enter a guilty plea is made knowing the charges that  
8 have been brought against me, any possible defenses, and the benefits and possible detriments of  
9 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no  
10 one coerced or threatened me to enter into this agreement.

11  
12  
13 Dated: \_\_\_\_\_

\_\_\_\_\_  
MIN T. MA  
Defendant

15  
16 KEVIN V. RYAN  
United States Attorney

17  
18 Dated: \_\_\_\_\_

\_\_\_\_\_  
HARTLEY M. K. WEST  
Assistant United States Attorney

20  
21            I have fully explained to my client all the rights that a criminal defendant has and all the  
22 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement  
23 and all the rights he is giving up by pleading guilty, and, based on the information now known to  
24 me, his decision to plead guilty is knowing and voluntary.

25  
26 Dated: \_\_\_\_\_

\_\_\_\_\_  
NANCI L. CLARENCE, ESQ.  
Clarence & Dyer LLP  
Attorney for Defendant